

REMARKS

The Office Action mailed July 28, 2004 has been carefully reviewed and, in view of the above amendments and following remarks, reconsideration and allowance of the application are respectfully requested.

I. Discussion of Amendments

The Examiner objected to the specification for including multiple elements referred to as chambers. In accordance with the Examiner's suggestions, the term "chamber 14" has been amended to "insert 14" throughout the specification. The Applicants respectfully request, therefore, that this objection be withdrawn.

II. Discussion of Incorporation By Reference

The specification of the present application includes references to various U.S. patents and also indicates that those patents are incorporated by reference. Essential material is defined as material that is necessary to (1) describe the claimed invention, (2) provide an enabling disclosure of the claimed invention, or (3) or describe the best mode. Nonessential material is matter that indicates the background of the invention or illustrates the state of the art. Applicants respectfully submit that each U.S. patent incorporated by reference is utilized to either indicate the background of the invention or illustrate the state of the art, as discussed below.

Referring to page 2 of the specification, for example, the concept of diffusion pumping is discussed generally, and a U.S. patent is also referenced to provide background information on the concept of diffusion pumping. Accordingly, this instance of incorporation by reference indicates the background of the invention and incorporates nonessential material.

Referring to pages 9 and 10 of the specification, suitable inflation gasses and barrier materials for the bladder are specifically disclosed. In order to provide additional information on the state of the art, for example, various U.S. patents are incorporated by reference. Accordingly, these instances of incorporation by reference incorporate nonessential material.

Based upon the above discussion, Applicants respectfully submit that each U.S. patent incorporated by reference incorporates nonessential material. Accordingly, the Applicants submit that the various incorporations by reference are proper.

III. Summary of Claims

Claims 1-34 and cancelled and claims 35-58 are added. Accordingly, only claims 35-58 are currently pending in the application, with claims 35, 50, 52, 55, and 57 being independent claims. Claims 1-34 were rejected in the Office Actions under various grounds, including anticipation by U.S. Patent Number 2,762,134 to Town; anticipation by U.S. Patent Number 5,979,078 to McLaughlin; obviousness over the combination of Town and U.S. Patent Number 2,677,906 to Reed; and obviousness over the combination of McLaughlin and U.S. Patent Number 5,902,660 to Huang.

IV. The Claims Are Allowable Over Applied Prior Art

Discussion of Town

Town discloses a cushioning insole with replaceable fluid-filled members. A main portion of the insole has a slit 12 through which the fluid-filled members may be inserted and removed. Referring to Figure 1 of Town, a first insert formed from a chamber 16 and another chamber 17 may extend longitudinally through a portion of a length of the insole. A second insert may also be placed in the heel area of the insole. An object of the invention in Town involves the replacability or interchangeability of the inserts (see Town, column 1, lines 57-61).

Independent claim 35 recites various features of a bladder for an article of footwear. The bladder includes a first chamber and a second chamber. The first chamber is formed of a first barrier material, and the first chamber is sealed to enclose a first fluid. The second chamber is formed of a second barrier material that is different than the first barrier material. The second chamber is also sealed to enclose a second fluid, and the second chamber is at least partially located within the first chamber. At least one of the second barrier material, the second fluid, and a pressure of the second chamber are selected such that the second fluid transfers into the first chamber to increase a pressure of the first chamber and decrease a pressure of the second chamber.

In contrast with independent claim 35, Town does not disclose a bladder having the following two features:

- The first chamber and the second chamber being sealed; and
- The second chamber being at least partially located within the first chamber.

As discussed above, the portion of the insole in Town that receives the fluid-filled inserts is not sealed due to the presence of slit 12. In addition, no sealed chamber is disclosed as being located at least partially within another sealed chamber. Furthermore, it would not be obvious to seal the main portion (i.e., close slit 12) as it is an object of the invention in Town to allow replacing or interchanging the inserts.

Each of independent claims 50, 52, 55, and 57 also recite that the first chamber and the second chamber are sealed, and that the second chamber is at least partially located within the first chamber. Accordingly, each of claims 35-58 should be allowable over Town for at least the same reasons. Furthermore, this deficiency of Town is not remedied by combining Town with Reed.

Discussion of McLaughlin

McLaughlin discloses a cushioning device for footwear having an outer bladder 17 and an inner bladder 15 positioned within outer bladder 17. Both outer bladder 17 and inner bladder 15 are sealed. According to McLaughlin, "the inner bladder is inflated to a pressure above atmospheric and the outer bladder is at atmospheric pressure. Alternatively, the outer bladder is inflated to a pressure above atmospheric, but less than the pressure within the inner bladder....Further, the bladder composite of the present invention permits the inner and outer bladders to be inflated at different pressures, as desired, to form a multi-stage cushioning system" (McLaughlin, column 2, lines 30-34 and 45-48).

Inner bladder 15 is inflated under pressure with one of a variety of gasses. "In a preferred embodiment of the present invention, bladder 15 is...inflated with sulfur hexafluoride to provide a consistent and enduring inflation pressure" (McLaughlin, column 4, lines 31-35). In addition, inner bladder 15 may enclose "other suitable gases which are identified in the '156 and '945 patents, such as: hexafluoroethane; perfluoropropane; perfluorobutane.... These gases may all be termed supergases" (McLaughlin, column 4, lines 19-28). The '156 and '945 patents (U.S. Patent Numbers 4,183,156 and 4,219,945 to Rudy) disclose the concept of diffusion pumping, in which a bladder includes a supergas, such as sulfur hexafluoride. Although the bladder is at a higher pressure than the surrounding fluid (usually air), the surrounding fluid diffuses into the bladder due to the fact that the bladder includes a lower concentration of the surrounding fluid. In other words, the surrounding fluid diffuses into the higher pressure bladder. Utilizing this concept in

footwear bladders ensures that the bladders remain inflated for relatively long periods of time (i.e., the useful life of the footwear).

From the preceding paragraph two notable features of the cushioning component in McLaughlin arise: (1) gas generally diffuses into inner bladder 15 rather than out of inner bladder 15 and (2) inner bladder 15 has "a consistent and enduring inflation pressure." In contrast with the first feature, independent claim 35 recites that the second fluid transfers into the first chamber. In other words, the direction of fluid transfer recited in independent claim 35 is from the inner chamber to the outer chamber, which is opposite from McLaughlin. In contrast with the second feature, independent claim 35 recites that the fluid transfer increases a pressure of the first chamber and decreases a pressure of the second chamber. In other words, the inner chamber does not exhibit "a consistent and enduring inflation pressure."

Each of independent claims 50, 52, 55, and 57 also include limitations that effectively recite that the second fluid transfers into the first chamber to increase a pressure of the first chamber and decrease a pressure of the second chamber. Accordingly, each of claims 35-58 should be allowable over McLaughlin for at least the same reasons. Furthermore, this deficiency of McLaughlin is not remedied by combining McLaughlin with Huang.

Further Discussion of McLaughlin

The materials forming bladders 15 and 17 may be different. According to McLaughlin, "The elastomeric material [forming] outer bladder 17 can also be a thinner, less expensive material than that utilized for bladder 15, however, because the strength requirements for secondary chamber 25 are minimal because lower gas pressures are utilized" (McLaughlin, column 4, lines 50-55). In other words, McLaughlin discloses the outer bladder as being formed from a less durable material than the inner bladder.

In contrast with McLaughlin, independent claim 52 recites that the second chamber is formed of a second barrier material that is less durable than the first barrier material. Similarly, independent claim 57 recites that the second barrier material has a structure that is more brittle than the first barrier material. That is, the material forming the inner chamber is less durable or more brittle than the material forming the outer chamber. Each of claims 52-53 and 57-58 are further distinguished from McLaughlin.

V. Conclusion

In view of the foregoing, the Applicants respectfully submit that all claims are in a condition for allowance. The Applicants respectfully request, therefore, that the rejections be withdrawn and that this application now be allowed.

This Amendment is being timely filed by facsimile transmission on November 19, 2004 with a one-month extension of time and a Request for Continued Examination. Should additional fees or an extension of time be deemed necessary for consideration of this Amendment, such fees or extension are hereby requested and the Commissioner is authorized to charge deposit account number 19-0733 for the payment of the requisite fee. If anything further is desirable to place the application in even better form for allowance, the Examiner is respectfully requested to telephone the undersigned representative at (503) 425-6800.

Respectfully submitted,

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